IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PARENTAL RIGHTS AS TO: D.T.M. AND J.D.M., MINORS.

RAVEN G.,
Appellant,
vs.
CLARK COUNTY DEPARTMENT OF FAMILY SERVICES,
Respondent.

No. 59440

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order terminating appellant's parental rights as to the minor children. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

To terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the children's best interests and that parental fault exists. See Matter of Parental Rights as to D.R.H., 120 Nev. 422, 428, 92 P.3d 1230, 1234 (2004); NRS 128.105. This court will uphold a district court's termination order if substantial evidence supports the decision. D.R.H., 120 Nev. at 428, 92 P.3d at 1234. Here, the district court determined that termination of appellant's parental rights was in the children's best interests and the court found parental fault based on unfitness and failure of parental adjustment. For the reasons discussed below, we conclude that the district court's decision is not

supported by substantial evidence, and therefore, we reverse and remand the district court's order.

On appeal, appellant contends that she substantially complied with her case plan when the first hearing for a permanency plan and placement review was held in August 2010, approximately six months from the time when she received her case plan. But respondent Clark County Department of Family Services (DFS) determined that the compliance was minimal, and therefore, recommended termination of parental rights. Thereafter, the case plan was amended, in February 2011, after appellant was involved in a domestic altercation with the children's father, and the termination hearing was held five months later, before appellant completed the requirements of the amended case plan.

DISCUSSION

Evidentiary standards

When children are removed from their home pursuant to NRS Chapter 432B and have resided outside that home for 14 of any 20 consecutive months, it is presumed that termination of parental rights is in the children's best interests. NRS 128.109(2). Once the statutory presumptions arise, the parent has the burden to present evidence to overcome the presumptions. Matter of Parental Rights as to A.J.G., 122 Nev. 1418, 1426, 148 P.3d 759, 764 (2006). In determining what is in the children's best interests, the district court must consider the children's continuing needs for "proper physical, mental and emotional growth and development." NRS 128.005(2)(c). A parent is unfit when, by his own fault, habit, or conduct toward the children, he fails to provide the children with proper care, guidance, and support. NRS 128.018; NRS 128.105(2)(c).

A parent's fitness may be diminished if the facts of the parent's felony conviction are of such a nature as to indicate the parent's unfitness to adequately provide for the children's care. NRS 128.106(6). While this court will not reweigh a witness's credibility, see generally Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004), because of the involvement of a parent's fundamental liberty interest in a termination proceeding, we closely scrutinize the district court's findings to determine whether the parental rights were properly terminated. Matter of Parental Rights as to N.J., 116 Nev. 790, 795, 801, 8 P.3d 126, 129, 133 (2000).

District court findings

In the present case, at the time that the termination hearing was conducted in July 2011, the children had resided outside the home for approximately 24 months.[1] In granting the petition to terminate appellant's parental rights, the district court found that appellant had substantially complied with her case plan. In fact, the district court's order noted that appellant has maintained housing and stable employment, that she called the children almost daily, that appellant purchased clothes and shoes for the children, that she maintained contact with her caseworker, that she arranged with her probation officer to move her case and register for a non-offender domestic violence classes in California where the children lived and where appellant's entire family support system was located. But the court nevertheless concluded that

[1]The children were placed with, and have remained, in the care of the maternal grandmother since November 2009.

appellant did not adjust her conduct or circumstances, or make reasonable efforts to do so, within a reasonable time to warrant the return of the children to her custody, and that appellant was an unfit parent.

The district court found that the "substantive elements of the case plan" required appellant to obtain a mental health assessment and comply with its recommendations, which included engaging in individual psychotherapy, completing in-home parenting coaching, and completing additional parenting classes. The district court found that appellant completed the parenting classes and attended some therapy sessions. As for the parenting classes, because the children were different ages, appellant was required to attend age-appropriate parenting classes for each child. The court recognized that in-home coaching was not available as the children were never returned to appellant's care. The court noted that the importance of appellant completing the parenting classes was "to understand and demonstrate the ability to meet the children's physical, social, medical, and educational needs." The court nevertheless found that appellant had not completed her individual psychotherapy or the doctor's recommendations.

The district court also found that appellant's criminal conviction directly related to her ability to care for her children and the court concluded that appellant "has not significantly engaged in the substantive elements of her case plan to try to remedy her poor decision-making and improve supervision issues."

Record evidence

Based on the appellate record, we conclude that substantial evidence does not support the district court's parental fault determination

and its order terminating appellant's parental rights. The record shows that appellant was not provided with a case plan until eight months after the children had been placed in respondent's custody. Under the case plan, appellant was required to maintain housing, obtain stable employment, attend parenting classes, complete a mental health assessment, and engage in psychotherapy sessions. By the first permanency plan and placement review in August 2010, appellant had completed all but two of the requirements: the mental health assessment and the psychotherapy sessions. The district court found that it took appellant one year after the children were removed from the home to obtain a mental health assessment. The record reflects, however, that appellant was not given a referral for the assessment until March 2010, that she was interviewed by the doctor in April 2010, and that the doctor issued his report in June 2010, which was 12 months after the children were taken into custody, but only 1 month after appellant received the referral to the doctor for the assessment.

The record shows that following the death of the one child, and the removal from the home of the other two children, appellant secured a job at WalMart where she was employed for approximately five months until she was fired from the job based on her felony conviction for manslaughter for her role in the child's death. Thereafter, appellant found another retail job that required her to work at one of three different locations, with short notice as to which location she would work at on a given day.

Before the children were placed with the maternal grandmother in California, appellant regularly visited the children at

Donna's House. Once the children moved to California, appellant maintained contact with them, but once she was convicted of a felony she was unable to freely travel between California and Nevada, so that her ability to visit the children was impeded. Even so, appellant's mother testified at the termination hearing that appellant spoke with the children by telephone. The record further revealed that the oldest child, now approximately nine years old, has expressed her desire to be with her mother. Also at the termination hearing, appellant's caseworker testified that she encouraged appellant to relocate to California to live with the children and the maternal grandmother, but appellant testified that she was intent on showing that she was capable of caring for her family and the she did not want to live with her mother. The grandmother testified that she wanted appellant to move to California, but that she could not relocate because she was on probation.

The record also shows that throughout the initial case plan period, appellant was dealing with her criminal proceedings, which were pushed back from November 2010 to December 2010, and it was not until January 2011, that appellant pleaded guilty to voluntary manslaughter. Appellant testified that until her plea was accepted, she did not know whether she was going to prison. After being placed on probation, appellant discussed transferring her case to California so that she could be reunited with her children again.

Also during the initial case plan period, there was an argument between appellant and the children's father during which he punched appellant in the stomach. Based on that altercation, appellant's case plan was amended to include the completion of domestic violence

classes. During the termination hearing, appellant testified that in her approximately nine-year relationship with the father that was the only time he ever hit her. Also, it was alleged that the father, with whom appellant by this time had broken off relations, had sexually abused one of the children. In response to these allegations, appellant assisted the police in attempting to obtain a telephone confession from the father.

Appellant's caseworker testified regarding her efforts to assist appellant to relocate to California. The caseworker testified that she contacted the probation officer in an attempt to have appellant's case transferred to California. Nevertheless, the caseworker testified, without explanation, that DFS was recommending termination because of appellant's "lack of behavioral change and recognizing the reason why the children came into care and being able to sufficiently care for the kids on her own." When asked about any trial home visits, the caseworker stated that that was not an option because the children lived in California and there were some issues regarding appellant's housing and the volatility of appellant's relationship with the children's father. But ultimately, the caseworker stated that placing the children in appellant's home was not appropriate because there had "been no behavioral change."

Although appellant did not continue with her psychotherapy, she did complete her parenting classes, but was never given the opportunity to demonstrate her parenting skills.

CONCLUSION

For the reasons set forth above, we conclude that the respondent failed to prove its petition by clear and convincing evidence and that the district court's decision terminating appellant's parental

rights is not supported by substantial evidence. Accordingly, we reverse the district court's termination order and we remand this matter to the district court to allow appellant additional time to comply with her case plan objectives.

It is so ORDERED.[2]

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Parraguirre, J.
Parraguirre

cc: Hon. Vincent Ochoa, District Judge
Frank J. Toti
Clark County District Attorney/Juvenile Division
Eighth District Court Clerk

[2]We have determined that this appeal should be submitted for decision on the briefs and appellate record without oral argument. See NRAP 34(f)(1).